IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 416 OF 2003

IN

SUMMARY SUIT NO. 894 OF 2001

Dadi P. Hataria & ors. .. Plaintiffs

versus

M/s.Faramroze & Associates & ors. .. Defendants

...

Mr.A.K. Saxena for the plaintiff.

Mr.G.S. Bhat for the defendant nos.1 and 2.

Ms.Madhavi S. Pujari for the defendant no.3.

CORAM : D.G. KARNIK,J.

DATED : 25th January 2005.

P.C.:

1. The plaintiff has filed this suit for recovery of Rs.23,00,000/- allegedly due as the principal amount and for interest and made a total claim of

Rs.39,56,000/- in this suit. According to the plaintiff, they advanced to the defendants from time to time loans and the defendants executed the promissory note agreeing to repay the principal sum of Rs.23,00,000/-. The copy of the promissory note is at Exhibit-A. The defendant nos.1 and 2 issued four cheques of Rs.5,00,000/- each amounting to Rs.20,00,000/-. However, all the four cheques were dishonoured. Copies of the dishonoured cheques are also annexed to the plaint as Exhibit-D. In the affidavit in reply, the defendant no.3 has denied execution of a promissory note. A copy of the promissory note shows that the promissory note does not bear the signature of defendant no.3. Also the cheques issued do not bear the signature of defendant no.3. In the circumstances, the defendant no.3 would be entitled to an unconditional leave to defend the suit.

2. So far as defendant nos.1 and 2 are concerned, they by filing of an affidavit in reply have not denied execution of a promissory note and has also admitted issuance of four cheques of Rs.5,00,000/- each. They have pleaded that they have paid the amount of Rs.13,00,000/-. No proof is adduced

regarding the repayment of Rs.13,00,000/-. The learned counsel for the defendant nos.1 and 2 fairly state that at this stage, the defendants do not have any proof regarding the repayment of Rs.13,00,000/-. Since the defendants have admittedly issued cheques of Rs.20,00,000/- and have admittedly executed a promissory note of Rs.23,00,000/- and there is no proof of repayment, the defendant nos.1 and 2 cannot be granted unconditional leave but the leave would be subject to their depositing the principal sum in the Court. In the circumstances, I pass the following order:-

3. The defendant no.3 is granted unconditional leave to defend the suit. The defendant nos.1 and 2 are granted conditional leave to defend the suit subject to depositing in the Court a sum of Rs.23,00,000/- within a period of four weeks. On such deposit being made, the plaintiffs are permitted to withdraw the said sum by furnishing the security to the satisfaction of Prothonotary and Sr. Master. If the security is not furnished within a period of four weeks of the deposit, the money shall be invested in State Bank of India initially for a period of 13 months to be renewed from time to time

till the disposal of the suit or till the plaintiffs apply for withdrawal by furnishing the security.

4. On deposit of the money, the suit shall stand transferred to the list of commercial causes.

5. The defendants shall file their written statement within a period of one month.

D.G. KARNIK, J